

SENATE BILL NO. 440

INTRODUCED BY K. GEBHARDT

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING AIR QUALITY PERMITS FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AMENDING SECTIONS 75-1-208, 75-2-211, 75-2-212, 75-2-215, 75-2-218, AND 75-2-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Energy Supply and Environmental Coordination Act of 1974 provides an express exemption from the National Environmental Policy Act for United States Environmental Protection Agency actions under the federal Clean Air Act; and

WHEREAS, as federal courts have ruled over time that the federal Clean Air Act provisions are functionally equivalent to the provisions of the National Environmental Policy Act; and

WHEREAS, the United States Environmental Protection Agency has delegated primacy to implement the provisions of the federal Clean Air Act within the state of Montana to the state of Montana; and

WHEREAS, if the United States Environmental Protection Agency actions under the federal Clean Air Act are exempt from the National Environmental Policy Act, then actions under the Montana Clean Air Act that implement the federal Act should be exempt from the Montana Environmental Policy Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Environmental review exemption. The department is exempt from the provisions of Title 75, chapter 1, parts 1 and 2 when issuing a permit or license under this part.

Section 2. Section 75-1-208, MCA, is amended to read:

"75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state

1 agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an
2 environmental review that must comply with the requirements of the National Environmental Policy Act.

3 (2) A project sponsor may, after providing a 30-day notice, appear before the environmental quality
4 council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the
5 project. The environmental quality council shall ensure that the appropriate agency personnel are available to
6 answer questions.

7 (3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the
8 agency regarding an environmental review, the project sponsor may submit a written request to the agency
9 director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow
10 the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director,
11 the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the
12 remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency
13 and the board to prepare for the meeting.

14 (4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental
15 review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are
16 provided by law. All time limits are measured from the date the agency receives a complete application. An
17 agency has:

18 (i) 60 days to complete a public scoping process, if any;

19 (ii) 90 days to complete an environmental review unless a detailed statement pursuant to
20 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

21 (iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

22 (b) The period of time between the request for a review by a board and the completion of a review by
23 a board under 75-1-201(1)(b)(iv)(C)(III) or (8) or subsection (10) of this section may not be included for the
24 purposes of determining compliance with the time limits established for conducting an environmental review under
25 this subsection or the time limits established for permitting in ~~75-2-244~~, ~~75-2-248~~, 75-10-922, 75-20-216,
26 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

27 (5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that
28 an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time,
29 and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension,
30 the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the

1 extension.

2 (6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that
3 the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate
4 board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

5 (7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review
6 by the expiration of the original or extended time period, the agency may not withhold a permit or other authority
7 to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval
8 to act would result in the violation of a statutory or regulatory requirement.

9 (b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82,
10 chapter 4, parts 1 and 2.

11 (8) Under this part, an agency may only request that information from the project sponsor that is relevant
12 to the environmental review required under this part.

13 (9) An agency shall ensure that the notification for any public scoping process associated with an
14 environmental review conducted by the agency is presented in an objective and neutral manner and that the
15 notification does not speculate on the potential impacts of the project.

16 (10) An agency may not require the project sponsor to provide engineering designs in greater detail than
17 that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate
18 board, if any, review an agency's request regarding the level of design detail information that the agency believes
19 is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an
20 advisory recommendation to the agency regarding the issue.

21 (11) An agency shall, when appropriate, consider the cumulative impacts of a proposed project. However,
22 related future actions may only be considered when these actions are under concurrent consideration by any
23 agency through preimpact statement studies, separate impact statement evaluations, or permit processing
24 procedures."

25
26 **Section 3.** Section 75-2-211, MCA, is amended to read:

27 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) The board shall by rule
28 provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

29 (2) (a) Except as provided in ~~75-1-208(4)(b)~~, 75-2-234; and subsections (2)(b) and (2)(c) of this section,
30 not later than 180 days before construction, installation, or alteration begins or as a condition of use of any

1 machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air
2 pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator
3 shall file with the department the appropriate permit application on forms available from the department.

4 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file
5 the permit application with the department no later than ~~January 3, 2006, or~~ 60 days after the initial well
6 completion date, ~~whichever is later~~. For purposes of this section, the initial well completion date for an oil or gas
7 well facility is:

8 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead
9 equipment into lease tanks from the ultimate producing interval after casing has been run; and

10 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of
11 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

12 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment
13 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on the
14 application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator may
15 not operate the oil or gas well facility and is liable for a violation of this section for every day of construction,
16 installation, or operation of the facility.

17 (d) The board shall adopt rules establishing air emission control requirements applicable to an oil or gas
18 well facility during the time from the initial well completion date until the department's decision on the application
19 is final.

20 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to the
21 federal air permitting provisions of 42 U.S.C. 7475 or 7503.

22 (3) The permit program administered by the department pursuant to this section must include the
23 following:

24 (a) requirements and procedures for permit applications, including standard application forms;

25 (b) requirements and procedures for submittal of information necessary to determine the location,
26 quantity, and type of emissions;

27 (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

28 (d) procedures for providing notice and an opportunity for comment to contiguous states and federal
29 agencies, as appropriate;

30 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

1 (f) procedures for the transfer of permits;

2 (g) requirements and procedures for suspension, modification, and revocation of permits by the
3 department;

4 (h) requirements and procedures for appropriate emission limitations and other requirements, including
5 enforceable measures necessary to ensure compliance with those limitations and requirements;

6 (i) requirements and procedures for permit modification and amendment; and

7 (j) requirements and procedures for issuing a single permit authorizing emissions from similar operations
8 at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the
9 requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the
10 department in advance of each change in location.

11 (4) This section does not restrict the board's authority to adopt regulations providing for a single air
12 quality permit system.

13 ~~(5) Department approval of an application to transfer a portable emission source from one location to~~
14 ~~another is exempt from the provisions of 75-1-201(1).~~

15 ~~(6)~~(5) The department may, for good cause shown, waive or shorten the time required for filing the
16 appropriate applications.

17 ~~(7)~~(6) The department shall require that applications for permits be accompanied by any plans,
18 specifications, and other information that it considers necessary.

19 ~~(8)~~(7) An application is not considered filed until the applicant has submitted all fees required under
20 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and ~~(7)~~
21 (6) of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing
22 of an application that the application is incomplete and fails to list the reasons why the application is considered
23 incomplete, the application is considered filed as of the date of the purported filing.

24 ~~(9)~~(8) ~~(a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires~~
25 ~~the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75,~~
26 ~~chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the~~
27 ~~application:~~

28 ~~—— (i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if~~
29 ~~the department prepares the environmental impact statement;~~

30 ~~—— (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state~~

1 ~~agency other than the department has been designated by the governor as lead agency for preparation of the~~
2 ~~environmental impact statement; or~~

3 ~~—— (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a~~
4 ~~permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact~~
5 ~~statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.~~

6 ~~(b)(a)~~ If an application ~~does not require the preparation of an environmental impact statement~~, is not
7 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42 U.S.C.
8 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt of a filed
9 application, as provided in subsection ~~(8)~~ (7), of its approval or denial of the application, except as provided in
10 subsection ~~(14)~~ (13).

11 ~~(e)(b)~~ If an application ~~does not require the preparation of an environmental impact statement and is~~
12 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the
13 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection ~~(8)~~ (7), of its
14 approval or denial of the application.

15 ~~(d)(c)~~ Except as provided in subsection ~~(9)(e)~~ (8)(d), if an application ~~does not require the preparation~~
16 ~~of an environmental impact statement and is~~ subject to the provisions of 75-2-215, the department shall notify
17 the applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
18 application, as provided in subsection ~~(8)~~ (7).

19 ~~(e)(d)~~ If an application for a permit is for the construction, installation, alteration, or use of a source that
20 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall
21 ~~prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required under~~
22 ~~this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications~~
23 application submitted under this part within the time period provided for in 75-2-215(3)(e).

24 ~~(f)(e)~~ The time for notification may be extended for 30 days by written agreement of the department and
25 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.
26 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's
27 agent.

28 ~~(g)(f)~~ Failure by the department to act in a timely manner does not constitute approval or denial of the
29 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
30 the department to act in a timely manner.

1 ~~(10)~~(9) When the department approves or denies the application for a permit under this section, a person
2 who is jointly or severally adversely affected by the department's decision may request a hearing before the
3 board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit
4 setting forth the grounds for the request must be filed within 30 days after the department renders its decision.
5 The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to
6 a hearing before the board under this subsection.

7 ~~(11)~~(10) (a) The department's decision on the application is not final until 15 days have elapsed from the
8 date of the decision.

9 (b) The filing of a request for hearing does not stay the department's decision. However, the board may
10 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

- 11 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or
12 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
13 requesting the stay.

14 (c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting
15 the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board
16 determines that the permit was properly issued. When requiring an undertaking, the board shall use the same
17 procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

18 ~~(12)~~(11) The board shall provide, by rule, a period of 30 days in which the public may submit comments
19 on draft air quality permits for applications that:

- 20 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661; or
21 (b) are subject to the requirements of 75-2-215; ~~or~~
22 ~~— (c) require the preparation of an environmental impact statement.~~

23 ~~(13)~~(12) The board shall provide, by rule, a period of 15 days in which the public may submit comments
24 on draft air quality permits not subject to subsection ~~(12)~~ (11).

25 ~~(14)~~(13) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

- 26 (a) the period as provided in subsection ~~(13)~~ (12) in which the public may submit comments on draft air
27 quality permits not subject to subsection ~~(12)~~ (11); and
28 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as
29 provided in subsection ~~(9)(b)~~ (8)(a).

30 ~~(15)~~(14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or

1 creation of:

2 (i) general permits covering multiple similar sources; or

3 (ii) other permits covering multiple similar sources.

4 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under the
5 permit upon authorization by the department or upon notice to the department."
6

7 **Section 4.** Section 75-2-212, MCA, is amended to read:

8 **"75-2-212. Variances -- renewals -- filing fees.** (1) A person who owns or is in control of a plant,
9 building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules
10 governing the quality, nature, duration, or extent of emissions of air pollutants. The application ~~shall~~ must be
11 accompanied by ~~such~~ information and data ~~as~~ that the board may require. The board may grant an exemption
12 or partial exemption if it finds that:

13 (a) the emissions occurring or proposed to occur do not constitute a danger to public health or safety;
14 and

15 (b) compliance with the rules from which an exemption is sought would produce hardship without equal
16 or greater benefits to the public.

17 (2) ~~No~~ An exemption or partial exemption may not be granted pursuant to this section except after notice
18 and a public hearing on due notice and until the board has considered the relative interests of the applicant, other
19 owners or property likely to be affected by the emissions, and the general public.

20 (3) The exemption or partial exemption may be renewed if ~~no~~ a complaint is not made to the board
21 because of it or if, after the complaint has been made and duly considered at a noticed public hearing held by
22 the board ~~on due notice~~, the board finds that renewal is justified. ~~No~~ A renewal may not be granted except on
23 application ~~therefor~~ submitted for renewal. An application ~~shall~~ must be made at least 60 days before the
24 expiration of the exemption or partial exemption. Immediately before application for renewal the applicant shall
25 give public notice of ~~his~~ the application in accordance with rules of the board. A renewal pursuant to this
26 subsection ~~shall~~ must be on the same grounds and subject to the same limitations and requirements as provided
27 in subsection (1).

28 (4) An exemption, partial exemption, or renewal ~~thereof~~ is not a right of the applicant or holder ~~thereof~~
29 but ~~shall~~ may be granted at the discretion of the board. However, a person adversely affected by an exemption,
30 partial exemption, or renewal granted by the board may obtain judicial review ~~thereof~~ as provided by 75-2-411.

(5) ~~Nothing in this~~ This section and ~~no an~~ exemption, partial exemption, or renewal granted pursuant to this section may not be construed to prevent or limit the application of the emergency provisions and procedures of 75-2-402 to a person or ~~his~~ the person's property.

(6) A person who owns or is in control of a plant, building, structure, process, or equipment, ~~(hereinafter~~ which are called a ~~facility~~) facilities, who applies to the board for an exemption or partial exemption or a renewal of an exemption or partial exemption from a rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than \$500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed \$80,000. The department shall prepare a statement of actual costs, and funds in excess of this ~~shall~~ must be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing; ~~environmental impact statement~~, or appreciable investigation by the department is necessary, the minimum filing fee ~~shall apply~~ applies or the fee may be waived by the department. The filing fee ~~shall~~ must be deposited in the state special revenue fund provided for in 17-2-102. It is the intent of the legislature that the ~~revenues~~ revenue derived from the filing fees ~~shall~~ must be used by the department to:

(a) compile the information required for rendering a decision on the request;

~~(b) compile the information necessary for any environmental impact statements;~~

~~(c)~~(b) offset the costs of a public hearing, printing, or mailing; and

~~(d)~~(c) carry out its other responsibilities under this chapter."

Section 5. Section 75-2-215, MCA, is amended to read:

"75-2-215. Solid or hazardous waste incineration -- additional permit requirements. (1) Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a person may not construct, install, alter, or use a solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

1 (3) The department may not issue a permit to a facility described in subsection (1) until:

2 (a) the owner or operator has provided to the department's satisfaction:

3 (i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air
4 pollutants, from any existing emission source at the facility; and

5 (ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air
6 pollutants, from the incineration of solid or hazardous waste or the use of hazardous waste as fuel for a boiler
7 or industrial furnace, as proposed in the permit application or modification;

8 (b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
9 applicant has published, in the county where the project is proposed, at least three notices, in accordance with
10 the procedures identified in 7-1-4127, describing the proposed project;

11 (c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the
12 department has conducted a public hearing ~~on an environmental review prepared pursuant to Title 75, chapter~~
13 ~~4, and, as appropriate, and~~ provided additional opportunities for the public to review and comment on the permit
14 application or modification;

15 (d) the department has reached a determination that the projected emissions and ambient concentrations
16 will constitute a negligible risk to the public health, safety, and welfare and to the environment; and

17 (e) the department has issued a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a
18 license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and this section
19 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit
20 pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit
21 alteration under 75-2-211 and this section, whichever is later.

22 (4) The department shall require the application of air pollution control equipment, engineering, or other
23 operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants,
24 equivalent to or more stringent than those achieved through the best available control technology.

25 (5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and
26 this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial
27 furnaces.

28 (6) This section does not relieve an owner or operator of a solid or hazardous waste incinerator or a
29 boiler or industrial furnace that is not included under subsection (1) from the obligation to obtain any permit
30 otherwise required under this chapter or rules implementing this chapter."

1
2 **Section 6.** Section 75-2-218, MCA, is amended to read:

3 **"75-2-218. Permits for operation -- application completeness -- action by department -- application**
4 **shield -- review by board.** (1) An application for an operating permit or renewal is not considered filed until the
5 department has determined that it is complete. An application is complete if all fees required under 75-2-220 and
6 all information and completed application forms required under 75-2-217 have been submitted. A complete
7 application must contain all of the information required for the department to begin processing the application.
8 If the department fails to notify the applicant in writing within 60 days after submittal of an application that the
9 application is incomplete and fails to list the reasons why the application is considered incomplete, the application
10 is considered filed on the date of the department's receipt of the application. The department may request
11 additional information after a completeness determination has been made. The board shall adopt rules that
12 contain criteria for use in determining both when an application is complete and when additional information is
13 required after a completeness determination has been made.

14 (2) Except as provided in ~~75-1-208(4)(b)~~ and subsection (3) ~~of this section~~, the department shall,
15 consistent with the procedures established under 75-2-217, approve or disapprove a complete application for an
16 operating permit or renewal and shall issue or deny the permit or renewal within 18 months after the date of filing.
17 Failure of the department to act in a timely manner does not constitute approval or denial of the application. This
18 does not limit or abridge the right of any person to seek available judicial remedies to require the department to
19 act in a timely manner.

20 (3) The board may by rule provide for a transition schedule for both the submittal to the department of
21 initial applications for operating permits by existing sources and action by the department on these initial permit
22 applications. The board may require that one-third of all operating permit applications required for existing
23 sources be submitted within the first calendar year after the adoption of rules implementing an operating permit
24 program under 75-2-217.

25 (4) If an applicant submits a timely and complete application for an operating permit, the applicant's
26 failure to hold a valid operating permit is not a violation of 75-2-217. If an applicant submits a timely and complete
27 application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a
28 violation of 75-2-217. The applicant shall continue to be subject to the terms and conditions of the expired
29 operating permit until the operating permit is renewed and is subject to the application of 75-2-217. The applicant
30 is not entitled to the protection of this subsection if the delay in final action by the department on the application

1 results from the applicant's failure to submit in a timely manner information requested by the department to
2 process the application.

3 (5) Except as provided in subsection (8), if the department approves or denies an application for an
4 operating permit or the renewal, modification, or amendment of a permit under 75-2-217 and this section, any
5 person that participated in the public comment process required under 75-2-217(7) may request a hearing before
6 the board. The request for a hearing must be filed within 30 days after the department renders its decision and
7 must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana
8 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

9 (6) (a) Except as provided in subsection (8), the department's decision on any application is not final until
10 30 days have elapsed from the date of the decision.

11 (b) Except as provided in subsection (8), the filing of a request for hearing does not stay the department's
12 decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and
13 opportunity for an informal hearing, that:

14 (i) the person requesting the hearing is entitled to the relief demanded in the request for a hearing; or
15 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
16 requesting the hearing.

17 (c) Upon granting a stay, the board may require a written undertaking to be given by the party requesting
18 the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board
19 determines that the permit was properly issued. When requiring an undertaking, the board shall use the same
20 procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

21 (7) The requirements of subsections (5) and (6) also apply to any action initiated by the department to
22 suspend, revoke, modify, or amend an operating permit issued under this section.

23 (8) The denial by the department of an application under 75-2-217 and this section is not subject to
24 review by the board or judicial review if the basis for denial is the written objection of the appropriate federal
25 agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

26 (9) Compliance with an operating permit granted or renewed under 75-2-217 and this section is
27 considered to be compliance with the requirements of this chapter only if the permit expressly includes those
28 requirements or an express determination that those requirements are not applicable. This subsection does not
29 apply to general permits provided for under 75-2-217."

30

1 **Section 7.** Section 75-2-301, MCA, is amended to read:

2 **"75-2-301. Local air pollution control programs -- consistency with state and federal regulations**

3 **-- procedure for public notice and comment required.** (1) After public hearing, a municipality or county may
4 establish and administer a local air pollution control program if the program is consistent with this chapter and
5 is approved by the board.

6 (2) If a local air pollution control program established by a county encompasses all or part of a
7 municipality, the county and each municipality shall approve the program in accordance with subsection (1).

8 (3) (a) Except as provided in subsection (5), the board by order may approve a local air pollution control
9 program that:

10 (i) subject to subsection (4), provides by rule, ordinance, or local law for requirements compatible with,
11 more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215,
12 75-2-217 through 75-2-219, and 75-2-402 and rules adopted under these sections;

13 (ii) provides for the enforcement of requirements established under subsection (3)(a)(i) by appropriate
14 administrative and judicial processes; and

15 (iii) provides for administrative organization, staff, financial resources, and other resources necessary
16 to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution
17 control program may administer the permit fee provisions of 75-2-220. The permit fees collected by a local air
18 pollution control program must be deposited in a county special revenue fund to be used by the local air pollution
19 control program for administration of permitting activities.

20 (b) Board approval of a rule, ordinance, or local law that is more stringent than the comparable state law
21 is subject to the provisions of subsection (4).

22 (4) (a) A local air pollution control program may, subject to approval by the board, adopt a rule,
23 ordinance, or local law to implement this chapter that is more stringent than comparable state or federal
24 regulations or guidelines only if:

25 (i) a public hearing is held;

26 (ii) public comment is allowed; and

27 (iii) the board or the local air pollution control program makes a written finding after the public hearing and
28 comment period that is based on evidence in the record that the proposed local standard or requirement:

29 (A) protects public health or the environment of the area;

30 (B) can mitigate harm to the public health or the environment; and

1 (C) is achievable with current technology.

2 (b) The written finding required under subsection (4)(a)(iii) must reference information and peer-reviewed
3 scientific studies contained in the record that form the basis for the board's or the local air pollution control
4 program's conclusion. The written finding must also include information from the hearing record regarding costs
5 to the regulated community that are directly attributable to the proposed local standard or requirement.

6 (c) (i) A person or entity affected by a rule, ordinance, or local law approved or adopted after January
7 1, 1996, and before May 1, 2001, that the person or entity believes is more stringent than comparable state or
8 federal regulations or guidelines may petition the board or the local air pollution control program to review the rule,
9 ordinance, or local law.

10 (ii) If the board or local air pollution control program determines that the rule, ordinance, or local law is
11 more stringent than state or federal regulations or guidelines, the board or local air pollution control program shall
12 either revise the rule, ordinance, or local law to conform to the state or federal regulations or guidelines or follow
13 the process provided in subsections (4)(a) and (4)(b) within a reasonable period of time, not to exceed 6 months
14 after receiving the petition.

15 (5) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local
16 air pollution control program the authority to control any air pollutant source that:

17 ~~(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter~~
18 ~~4, part 2;~~

19 ~~(b)(a)~~ is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter
20 20; or

21 ~~(e)(b)~~ has the potential to emit 250 tons a year or more of any pollutant subject to regulation under this
22 chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air
23 pollution control program prior to January 1, 1991.

24 (6) If the board finds that the location, character, or extent of particular concentrations of population, air
25 pollutant sources, or geographic, topographic, or meteorological considerations or any combination of these make
26 impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control
27 program, the board may determine the boundaries within which the program is necessary and require it as the
28 only acceptable alternative to direct state administration.

29 (7) If the board has reason to believe that any part of an air pollution control program in force under this
30 section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or

1 is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing
2 on the matter.

3 (8) If, after the hearing, the board determines that any part of the program is inadequate to prevent and
4 control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter,
5 it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

6 (9) If the jurisdiction fails to take these measures within the time required, the department shall
7 administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any
8 applicable board order, that are necessary to correct the deficiencies found by the board. The department's
9 control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the
10 affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

11 (10) If the board finds that the control of a particular air pollutant source because of its complexity or
12 magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and
13 economically performed at the state level, it may direct the department to assume and retain control over that air
14 pollutant source. A charge may not be assessed against the jurisdiction. Findings made under this subsection
15 may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size
16 of the communities in which they are located.

17 (11) A jurisdiction in which the department administers all or part of its air pollution control program under
18 subsection (9) may, with the approval of the board, establish or resume an air pollution control program that
19 meets the requirements of subsection (3).

20 (12) A municipality or county may administer all or part of its air pollution control program in cooperation
21 with one or more municipalities or counties of this state or of other states.

22 (13) Local air pollution control programs established under this section shall provide procedures for public
23 notice, public hearing, public comment, and appeal for any proposed new or revised rules, ordinances, or local
24 laws adopted pursuant to this section. The procedures must comply with the following requirements:

25 (a) The local air pollution control program shall create and maintain a list of interested persons who wish
26 to be informed of actions related to rules, ordinances, or local laws adopted by the local air pollution control
27 program.

28 (b) At least 30 days prior to the adoption, revision, or repeal of a rule, ordinance, or law, the local air
29 pollution control program shall give written notice of its intended action.

30 (c) The notice required under subsection (13)(b) must include:

1 (i) a statement of the terms or substance of the intended action or a description of the subjects and
2 issues affected by the intended action;

3 (ii) an explanation of the procedure for a person to be included on the list of interested persons
4 established pursuant to subsection (13)(a);

5 (iii) an explanation of the procedures and deadlines for presentation of oral or written comments related
6 to the intended action;

7 (iv) an explanation of the process for requesting a public hearing as provided in subsection (13)(f); and

8 (v) the rationale for the intended action. The rationale must:

9 (A) include an explanation of why the intended action is reasonably necessary to implement the goals
10 and purposes of the local air pollution control program;

11 (B) specifically address those intended actions for which there are no similar state or federal regulations
12 or guidelines; and

13 (C) be written in plain, easily understood language.

14 (d) For the purposes of subsection (13)(c)(v), a statement of authority to adopt a rule, ordinance, or local
15 law does not, standing alone, constitute a showing of reasonable necessity for the intended action.

16 (e) The local air pollution control program shall mail a copy of the proposed rule, ordinance, or local law
17 to all interested persons on the list established pursuant to subsection (13)(a) who have made timely requests
18 to be included on the list.

19 (f) If at least 10 of the persons who will be directly affected by the proposed rule, ordinance, or local law
20 request a public hearing, the local air pollution control program shall hold a hearing to hear comments from the
21 public on the intended action.

22 (g) The local air pollution control program shall prepare a written response to all comments submitted
23 in writing or presented at the public hearing for consideration prior to adoption, revision, or repeal of the proposed
24 rule, ordinance, or local law.

25 (h) A person who submits a written comment on a proposed action or who attends a public hearing in
26 regard to a proposed action must be informed of the final action."

27
28 **NEW SECTION. Section 8. Codification instruction.** [Section 1] is intended to be codified as an
29 integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 1].
30

1 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

2

3 NEW SECTION. Section 10. Applicability. [This act] applies to applications for permits under Title 75,
4 chapter 2, part 2, received on or after [the effective date of this act].

5 - END -